United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

ORIGINAL

74-1851

B P/S

To be argued by
NORMAN A. COPLAN and
RICHARD L. SCHMEIDLER

United States Court of Appeals
FOR THE SECOND CIRCUIT

ROBERT A. W. CARLETON, JR., D/B/A CARLETON BROTHERS COMPANY,
Plaintiff-Appellant,

against

UNION FREE SCHOOL DISTRICT NO 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER, RICHARD STOBAEUS, and CAUDILL, ROWLETT and SCOTT,
Defendants-Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF DEFENDANTS-APPELLEES

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UNITED STATES COURT OF APPEALS

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No. 74-1851

ROBERT A. W. CARLETON, JR., d/b/a
CARLETON BROTHERS COMPANY,
Plaintiff-Appellant,

-against-

UNION FREE SCHOOL DISTRICT NO. 8,
TOWN OF ORANGETOWN, ROCKLAND COUNTY,
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REINER, RICHARD STOBAEUS, and
CAUDILL, ROWLETT AND SCOTT,
Defendants-Appellees.

On Appeal From the District Court of the United States

For the Southern District of New York

BRIEF OF DEFENDANTS-APPELLEES

STATEMENT

Defendants-Appellees Union Free School District No. 8, Town of Orangetown, Rockland County, New York; George W. Renc; Lee N. Starker; Edward C. Manning; Walter Reiner; Richard Stobaeus; and Caudill, Rowlett

and Scott (hereinafter referred to as "Defendants") moved (two motions) in the Court below (App. 11-54, 56-66) for judgment dismissing the complaint of Plaintiff-Appellant Robert A. W. Carleton, Jr., d/b/a Carleton Brothers Company (hereinafter referred to as "Carleton") pursuant to various provisions of Rule 12 and Rule 56 of the Federal Rules of Civil Procedure. These motions were granted (App. 55,106) and judgment dismissing the complaint for lack of jurisdiction of the subject matter was entered. (App. 107). Carleton appeals from this judgment and from the order of the Court below (App. 184) denying his motion for a renewal and/or reargument of said motions.

This brief on behalf of the Appellees is jointly submitted pursuant to Rule 28(i) of the Federal Rules of Appellate Procedure.

THE ISSUES FOR REVIEW

1. Are the Defendants entitled to summary judgment on the ground that there is no genuine issue as to any material fact?

2. Does the complaint state a valid cause of action for which relief can be granted?

3. Does the Court have jurisdiction of an independent action by Carleton to set aside the order dismissing and discontinuing an earlier action, or was

Carleton limited to the remedy provided by Section 60(b) of the Federal Rules of Civil Procedure?

4. Is Carleton's action barred by laches?

5. Is Carleton barred from equitable relief because he does not come into equity with "clean hands"?

THE FACTS

In 1964, Carleton instituted an action against Defendants (64 Civ. 3498) alleging damages for breach of contract on the part of Defendant Union Free School District No. 8 and alleging damages against all other Defendants for inducing a breach of contract. (App. 20-27). After an extended period of pre-trial proceedings, the case was assigned to Judge Milton Pollack for the purpose of trial. At such time, various conferences were held between the attorneys for the respective parties and Judge Pollack, and between Judge Pollack, Carleton and his attorney concerning the subject of settlement. None of the Defendants were present at the time of these discussions; neither the Defendants nor their attorneys ever had any discussions with Carleton seeking to influence him in respect to a settlement. Settlement was eventually agreed upon (App. 13) and accepted by Carleton voluntarily upon the advice of his counsel. (App. 15).

The settlement provided for a payment by Defend- and Union Free School District No. 8 of the sum of $100,000.00 and payment by Defendant Caudill, Rowlett and Scott, of the sum of $25,000.00. (App. 33). In addition, Carleton's bonding company released liens on certain real property owned by Carleton and his mother and also released claims against certain securities which had been deposited by Carleton with lending institutions. (App. 34-35). This settlement was consummated on December 10, 1969.

Before the said settlement was consummated, Carleton was placed under oath as a witness in his own behalf by Judge Pollack and carefully and extensively queried as to his understanding of the proposed settlement and as to its acceptability. (App. 28-48). Carleton assured Judge Pollack, under oath, that he was fully aware of and satisfied with the amount of the settlement (App. 33) and how it was to be applied. (App. 34, 35). Based upon the agreement of all parties concerned, the Court ordered the action settled and dismissed on the merits with prejudice (App. 47), the attorneys entered into a written stipulation settling and discontinuing the action with prejudice (App. 49-50), and Carleton executed general releases running to Defendants (App. 51-52).

Following the said settlement, there was no communication of any kind between Carleton and the Defendants or their attorneys. Carleton took no steps by way of a motion under Rule 60(b) of the Federal Rules of Civil Procedure, or otherwise, questioning the settlement which had been made, until the latter part of 1973, approximately four years after the settlement of the action. At such time, Carleton commenced an action in the United States District Court for the Southern District of New York (73 Civ. 1946) against Judge Milton Pollack, Carleton's bonding company, his own attorney and against the attorneys for the Defendants in the first action, alleging, among other things, that he had been coerced into accepting the settlement in the first action. Also named as a Defendant was William Caudill, one of the partners of Defendant Caudill, Rowlett and Scott. The complaint in that action was dismissed by Judge Marvin E. Frankel on the ground that it failed to state a cause of action upon which relief could be granted and a judgment of dismissal was entered on January 2, 1974. No appeal from this dismissal was taken.

In March, 1974, Carleton commenced still a third action naming as Defendants the same Defendants as in the first action commenced in 1964. Said complaint in

this action was dismissed by Judge Inzer B. Wyatt in response to the motions of the Defendants for summary judgment and for dismissal of the complaint, and it is from the judgment of dismissal that Carleton appeals.

NATURE OF THE COMPLAINT

The gravamen of Carleton's complaint (App. 1-9) appears to be that the settlement which he made in the 1964 action was entered into by him "as the result of threats, pressure, extortion and overbearing on the part of the Defendants" and as the result of "fraud". Based upon these allegations, Carleton seeks to set aside the order of the Court dismissing and discontinuing the 1964 action and to rescind the general releases which Carleton furnished to the Defendants in that action. Carleton now seeks, in 1974, to resurrect and continue the action commenced in 1964 and settled in 1969.

Although the relief requested in Carleton's complaint is to continue the 1964 case, Carleton has set forth in such complaint all of the allegations of the 1964 complaint in respect to the alleged breach of contract on the part of Defendant Union Free School District No. 8 and the alleged inducement of breach of contract

on the part of the other Defendants, and has further added allegations directed toward Defendant Caudill, Rowlett and Scott, contending that Carleton is entitled to damages from said Defendant as a third-party beneficiary under said Defendant's architectural contract with Defendant Union Free School District No. 8. (App. 5-6). Although obviously Carleton may not at the same time seek both to continue an old action and prosecute a new action on the same subject matter, it is of interest to point out to the Court that these added allegations are included in the complaint in this action despite the fact that in the 1964 action, the Court below, by Judge Floyd F. MacMahon, specifically held that Carleton was not a third-party beneficiary of the contract between Defendant Caudill, Rowlett and Scott and Defendant Union Free School District No. 8, and denied Carleton's motion to amend his complaint to so plead. (App. 53-54).

Carleton, while seeking to reinstitute the settled 1964 action, also demands in his new action, as an additional remedy, an award of punitive damages in the sum of $6,789,197.42.

POINT I

THE DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT DISMISSING THE COMPLAINT ON THE GROUND THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT

The major thrust of Carleton's complaint is the allegation that as the result of "extortion" and "fraud" by the Defendant, he agreed to a settlement of the 1964 action. If there are no facts supporting such allegations of extortion or fraud on the part of the Defendants, it must follow that the complaint was properly dismissed.

In moving for summary judgment, the Defendants alleged that they played no part in the determination of Carleton to settle the earlier action and that neither they nor their attorneys had any contact with him in this respect. (App. 15). Carleton, in resisting a motion for summary judgment, is required to set forth facts which will create a genuine issue as to any material fact. Beaufort Concrete Co. v. Atlantic States Construction Co., 352 F.2d 460, 463 (5th Cir. 1965), cert. denied, 384 U.S. 1004 (1966). Rule 56(e) of the Federal Rules of Civil Procedure so provides, in unequivocal language:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as other-

> wise provided in this rule, must set forth a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Carleton, in the papers submitted to the Court below, not only failed to deny the facts in this respect as alleged by Defendants, but fails to set forth a single instance of any act or action of any of the Defendants which could even vaguely or remotely support the allegations of the complaint.

On the contrary, the facts as alleged by Carleton in his papers below, particularly the affidavit in support of his motion for reargument (App. 122-126), indict him as an alleged participant in a scheme to exercise a fraud on these Defendants and on the Court. Carleton asserts in substance in his affidavit that he agreed to a suggestion by his attorney that he settle the action in order to alleviate his financial pressures and that his attorney would, following the settlement, take steps to reopen and continue the case. Carleton, in his brief before this Court, summarizes the purported facts which allegedly led him to accept the settlement in question and the facts as so stated by Carleton to this Court bear repeating. He states at pages 9 - 10 of his brief:

> "Counsel for Carleton finally informed Carleton that he could alleviate his financial burdens and emotional pressures very easily by settling the litigation, obtaining certain funds pursuant to the settlement,

paying off his debt to the bonding company and then vacating the settlement and proceeding with the litigation, using the settlement funds to pay off the bonding company which would prevent an impending disaster and alleviate the emotional pressures which Carleton found were inflicted upon him by his family.

"Counsel for Carleton had informed Carleton that he had known Judge Pollack prior to his ascending to the bench and had been able to put things over upon this judge while the judge was a trial attorney. The fact that Judge Pollack was now a judge would still not prevent counsel for Carleton from putting things over upon him and accordingly there would be no problem with obtaining these emergency funds by means of settlement and then proceeding with the litigation thereafter.

"To this end, Carleton was instructed to agree with anything that happened in court and to answer 'yes' to all questions asked of him by his counsel and by the judge in order to result in obtaining the settlement."

The purported scheme, as described by Carleton was apparently readily and hungrily accepted by him and he concededly acted in furtherance of it. Upon the alleged refusal of his attorney to execute that part of the scheme which would necessitate the taking of some steps to reopen and continue the litigation, Carleton deemed himself, in some unfathomable fashion, an aggrieved party who was entitled to relief from the Court which he had attempted to mislead. In what appears to be the ultimate in irrationality, Carleton has translated a scheme or trick purportedly

hatched between him and his attorney, to take advantage of the Defendants and of Judge Pollack, into an act of extortion and fraud on the part of these very same Defendants, which not only entitles him to the setting aside of the order of the Court dismissing and discontinuing the earlier settled action, but to punitive damages in a sum close to $7 million.

In this bewildering scenario, where white becomes black and black becomes white, Carleton is requesting this Court, some five years after the earlier case was settled and after he has had the benefits of the settlement sum of $125,000.00, to assist him in consummating the nefarious scheme which he describes. It is respectfully submitted that the Defendants were not only entitled to summary judgment in this action, but that they are in need of some protection against the abuse of process for which Carleton has been responsible, not only in the action before this Court, but in the 1973 action which he instituted, and which was dismissed.

POINT II

CARLETON'S ONLY APPROPRIATE REMEDY WAS A MOTION UNDER RULE 60(b)

The Court below held that Carleton's present attempt to reopen his 1964 action by an independent action was improper, and that his only remedy would have been a motion under Rule 60(b) of the Federal Rules of Civil Procedure. (App. 55). This holding was correct; it should be affirmed.

Rule 60(b) provides in part as follows:

> "Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; ... The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken."

It is apparent that Carleton's claims of fraud or mistake are within the scope of Rule 60(b)(1) and 60(b)(3). Thus, any motion would have to have been pursuant to those provisions, and would have to have been made within one year. Moreover, Carleton waited an obviously unreasonable time. As will be argued in Point III, infra, he first

presented his allegations as to purported fraud or mistake on his motion for reargument in the Court below.

Rule 60(b) also recognizes the power of a court "to set aside a judgment for fraud upon the court." This provision is inapplicable to the purported scheme of Carleton and his counsel (App. 124-25) to procure a settlement. Even if Carleton committed perjury in consenting to the settlement while under oath, this would not have constituted "fraud on the court." Martina Theatre Corp. v. Schine Chain Theatres, Inc., 278 F.2d 798, 801 (2d Cir. 1960); Lockwood v. Bowles, 46 F.R.D. 625, 628 (D.D.C. 1969). No other fraud has been specified by Carleton.

The remaining provision of Rule 60(b), on which Carleton relies to bring him outside the requirement that he proceed by motion as provided therein, is the provision for "an independent action to relieve a party from a judgment." Such an action may be resorted to only "under unusual and exceptional circumstances." Crosby v. Mills, 413 F.2d 1273, 1276 (10th Cir. 1969) (quoting 3 Barron & Holtzoff, Federal Practice and Procedure §1331, at 433).

Such relief is unavailable to Carleton because of his failure to avail himself of the remedies avail-

able to him under Rule 60(b).

> "It must also appear that the situation in which the party seeking relief finds himself is not due to his own falult, neglect or carelessness. In this type of action, it is fundamental that equity will not grant relief if the complaining party 'has, or by exercising proper diligence would have had, an adequate remedy at law, or by proceedings in the original action * * * to open, vacate, modify or otherwise obtain relief against, the judgment.'" Winfield Associates, Inc. v. Stoncipher, 429 F.2d 1087, 1090 (10th Cir. 1970) (quoting 49 C.J.S. Judgments §343a).

This rule, that equity will not give relief when there is a wholly adequate remedy at law, applies equally although the remedy is no longer available. United States v. City of New York, 175 F2d 75 (2d Cir.), cert. denied, 338 U.S. 885 (1949). Additional reasons why Carleton may not bring an independent equitable action are considered in Points II, III and IV, infra.

Carleton failed to avail himself of his remedies under Rule 60(b). His complaint satisfies neither the requirements for an action to set aside a "fraud on the court" nor for an independent equitable action for relief from the judgment. Thus, the Court below correctly granted summary judgment dismissing his complaint for lack of jurisdiction.

POINT III

CARLETON'S LACHES BARS THIS INDEPENDENT EQUITABLE ACTION

The jurisdictional ground upon which Carleton relies, on this appeal from an order dismissing his complaint for lack of jurisdiction, is the inherent equitable jurisdiction of the federal courts to correct their judgments. Thus, Carleton claims that this action is not barred by the time limit of Rule 60(b), Federal Rules of Civil Procedure, but instead is subject only to the time limits imposed on independent actions. The only time limitation imposed upon an independent action is the equitable doctrine of laches. Crosby v. Mills, supra.

Since Carleton failed for more than four years to raise the claim he now urges, this action is clearly barred by laches. That the Defendants are prejudiced by this delay is clear. Carleton now is seeking to litigate matters arising out of a 1960 contract. (App. 1-2).

He seeks to reopen litigation commenced in 1964 and settled in 1969. (App. 6). The passage of time will unavoidably complicate defense against these claims, if Carleton is permitted to relitigate his 1964 action now.

The claim on which Carleton now relies is that his submission to the settlement of his original action did not represent his meaning. (Complaint, ¶24, at App. 7). More specifically, he relies upon his partially successful purported fraudulent scheme perpetrated in December of 1969. (App. 124-25; Appellant's Brief 9 - 10; cf, App. 30 - 35, 45 - 46). This claim was first made explicit only upon Carleton's motion for reargument. (App. 124 - 25). He never raised this claim throughout the years of correspondence detailed in the exhibits to his affidavit in support for his motion for reargument of the motions by defendants for summary judgment which were granted by the court below.

The first of the "numerous applications by letter to the Court" upon which Carleton relies to demonstrate that he is not guilty of laches (Appellant's Brief 19) is exhibit A to his affidavit in support of his motion for reargument. (App. 129). This three-page letter rehearses his grievances arising from the 1960 construction

contract. It inquires as to the reason why Carleton was denied a federal trial of his claims, although Carleton was made thoroughly aware that the settlement to which he agreed precluded any further attempt on his part to recover additional damages. (App. 33). Carleton admits that he knew that it would be necessary to set aside the settlement agreement before he could pursue his claims. (Appellant's Brief 9 - 10). Nevertheless, in his first letter to Judge Pollack he ignored the settlement agreement and proceeded to outline the substance of his grievances. He never suggested that the settlement agreement, of which he was well aware, did not reflect his true intentions at the time it was entered into, even when Judge Pollack brought the agreement and his testimony -- to his attention. (App. 132 - 33).

Carleton continued with a stream of correspondence of which Defendants had no knowledge. Sometimes he demanded a jury trial. (App. 164, 168). Sometimes he demanded a non-jury trial. (App. 149, 155, 160). Although he knew that it would be necessary to set aside the settlement, he did not seek such relief, but attempted to proceed, directly, with the action which had been settled.

The instant claim of a plan by which the court-approved settlement was to be set aside is clearly a recent development. Although Carleton made repeated accusations against his former counsel who allegedly concocted this scheme, (see e.g., App. 151, 165, 175) he first alleged this scheme after summary judgment had been granted dismissing his complaint in this action. He never thought to raise this issue during all the years of his "numerous applications" and "continuous desire to have his day in Court". (Appellant's Brief 19). He did not even present it in opposition to the motions for summary judgment below. Only after judgment was given against him in the Court below did he first present his claim that fraud and mistake as to the effect of the settlement infected his agreement thereto in open court over four years earlier. His failure to raise this issue until this late date raises the question of the accuracy of his charges. It also demonstrates that, having slept on this claim for over four years, he should be barred from raising it now by the equitable doctrine of laches.

POINT IV

CARLETON'S UNCLEAN HANDS BAR THE EQUITABLE RELIEF HE NOW SEEKS

The independent action by which Carleton now seeks

to overthrow a prior judgment of the Court below is an inherently equitable one. Upon the facts as he presents them, he is barred from such relief by the doctrine that equity grants relief only to one who comes with clean hands. Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806 (1945); Keystone Driller Co. v. General Excavator Co., 290 U.S. 240 (1933).

The fraud and mistake, which Carleton now claims, are his mistaken belief that the 1969 settlement could easily be set aside and the fraud by which he claims that he procured such settlement. (Appellant's Brief 9 - 11). It is clear that Carleton himself was a major participant in any fraud by which such settlement was procured. Though he claims his behavior was suggested by his attorney, this does not change the fact that he deliberately and willingly assented, under oath, in order to procure the settlement agreement. (App. 46). His behavior is such as to render him an unsuitable recipient for the equitable relief he seeks.

Not content with coming into court with unclean hands, Carleton now seeks the aid of the courts in effectuating the fraudulent scheme he says he began in 1969. That scheme consisted of procuring a settlement of the

1964 action, obtaining funds prusuant to the settlement agreement, vacating the settlement, and proceeding with the litigation. (Appellant's Brief 9 - 10). Only the first two steps of the scheme were effectuated in 1969 and 1970. Carleton's counsel refused to attempt to vacate the settlement and proceed with the litigation. (Appellant's Brief 11).

It is clear that although Carleton intended to vacate the settlement, he never intended to make restitution of the proceeds of the settlement. He hoped to be absolved of all claims against him at no expense whatsoever, while retaining all the claims in the 1964 action.

The instant action is Carleton's effort to succesfully effectuate the fraud which he was unable to complete in 1970. In effect, he comes to this Court, as he came to the Court below, seeking specific performance of the scheme he set in motion in 1969. To permit Carleton to press this action would be to carry forward and complete the fraudulent scheme he alleges.

It would be highly inequitable for the Court to permit Carleton to recover all that he gave up in the 1969 settlement without requiring him to make restitution

of that which he received. It is respectfully submitted that it would be still more inequitable to permit him to do so in effectuation of his callous attempt at fraud upon Judge Pollack. (Appellant's Brief 10). Not only does Carleton come into court with unclean hands, but he also seeks the aid of this Court in completing a hitherto unsuccessful attempt at fraud upon the Defendants in the Court below in 1969. The Court below properly held that it had no jurisdiction to consider a complaint seeking such relief. It is respectfully submitted that this Court should affirm.

POINT V

THE REQUISITE SHOWING OF FRAUD OR MISTAKE HAS NOT BEEN MADE

Fraud or mistake is a requisite for the independent equitable action by which Carleton now seeks relief from a judgment of the Court below. Bankers Mortgage Co. v. United States, 423 F.2d 73, 78 (5th Cir.), cert. denied, 399 U.S. 927 (1970). There has been no showing of any fraud or mistake sufficient to justify the equitable relief he seeks.

The only fraud detailed by Carleton, either to the Court below or upon this appeal, is the fraud allegedly attempted by Carleton and his counsel in procuring

a settlement which Carleton intended to vacate. (App. 124-25; Appellant's Brief 9-10). However, Carleton cannot rely upon this fraud as a basis for setting aside the judgment entered in 1970 and the releases executed in connection therewith. To do so would be to permit him to benefit from his own fraud.

The independent equitable action to obtain relief from a judgment at law was never intended to permit a litigant to obtain relief from a judgment which he himself had fraudulently procured. Mere fault or negligence on his part would be sufficient to bar such relief. Pickford v. Talbott, 225 U.S. 651 (1912). A fortiori, relief by an independent equitable action is not available to one who procures a judgment by a fraud. Nor can his conclusion that he was mistaken in so acting shield him from the judgment he procured. The court below properly held that it had no jurisdiction of such a claim, and granted summary judgment dismissing the complaint.

POINT VI

THE COURT BELOW HAD NO JURISDICTION INDEPENDENT OF ITS ANCILLARY EQUITABLE JURISDICTION

On his motion for reargument in the Court below, Carleton raised an issue which he considered to have

been grounds for reargument since he had not directed the Court's attention to such issue in his original motion papers. This was that the complaint sought not only relief from a prior judgment of the Court below, but also rescission of certain general releases. The Court below, however, had no jurisdiction to grant such relief. The lack of that Court's equitable ancillary jurisdiction to relieve Carleton from the prior judgment has already been considered in Points II, III, IV and V, supra. Claims for relief other than the correction of the prior judgment of the Court below would require some other basis for federal jurisdiction.

The only possible basis for federal jurisdiction suggested by the complaint is diversity of citzenship. 18 U.S.C. §1332. Diversity jurisdiction, however, is clearly rebutted by the affidavit of Matthew F. Sarnell in support of the motion for summary judgment. Defendant Stobaeus is a resident and citizen of the State of New Jersey (App. 61). Carleton has never controverted this allegation in any fashion, other than an allegation, upon information and belief, in Paragraph 11 of the Complaint (App. 4). Rule 56(e) of the Federal Rules of Civil Procedure requires a greater showing to withstand

a motion for summary judgment.

It is clear that there is no issue of fact as to the citizenship of defendant Stobaeus. He, like plaintiff, is a citizen of New Jersey. Thus there is not diversity of citzenship between plaintiff and all defendants, and the Court below lacked jurisdiction under 18 U.S.C. §1332.

Since there is no disputed issue of fact as to the lack of diversity jurisdiction of the Court below, summary judgment dismissing the complaint for lack of jurisdiction was properly granted.

CONCLUSION

The judgment dismissing the complaint should be in all respects affirmed.

Respectfully submitted,

AMEND & AMEND
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Court Press Form No. 2-Affidavit.
H.15

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT A. W. CARLETON, JR., D/B/A
CARLETON BROTHERS COMPANY,

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against

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TOWN OF ORANGETOWN, ROCKLAND
COUNTY, NEW YORK, et al.,

Defendants-Appellees.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes and says that he is over the age of 18 years. That on the 1st day of October, 19 74 he served two copies of the Brief of Defendants-Appellees on Robert A. W. Carleton, Jr., the Appellant, pro se

~~the attorney for the~~

by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a Branch Post Office regularly maintained by the Government of the United States at 90 Church Street, Borough of Manhattan, City of New York, directed to said ~~attorney~~ appellant at No. 1078 Anderson Avenue, Palisades, N. J. ~~N.Y.~~, that being the address designated by him for that purpose upon the preceding papers in this action.

David F. Wilson

Sworn to before me this
1st day of October, 1974.

Courtney J. Brown

COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1976